

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

BOBBY HAMMONS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-10-097-JHP
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security Administration,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

This matter comes before the Court on Plaintiff's Application for the Award of Attorney's Fees Under the Equal Access to Justice Act filed January 3, 2012 (Docket Entry #22), to which Defendant objects. The Motion was referred to the undersigned for Findings and Recommendation by presiding United States District Judge James H. Payne by minute order entered March 6, 2012 as corrected April 3, 2012.

On September 30, 2011, Judge Payne entered Judgment, reversing the decision of the Administrative Law Judge denying Plaintiff's request for benefits and remanded the case to Defendant for further proceedings. On January 3, 2012, Plaintiff filed his application requesting attorney's fees in the amount of \$4,442.30 in accordance with the Equal Access to Justice Act ("EAJA").

Defendant filed his objection to the motion, contending Plaintiff's application was filed untimely. To be considered timely, a request for attorney compensation under EAJA must be filed within 30 days after the entry of judgment. 28 U.S.C. §


2412(d)(1)(B). The 30 day time limitation begins to run at the expiration of the 60 day period allowed for an appeal to be filed. Shalala v. Schaefer, 509 U.S. 292, 302 (1993). As a result, a plaintiff normally must file an application for attorney compensation within 90 days after the entry of judgment. Applying this rule, Plaintiff in this case would have been required to file the application for EAJA compensation by December 29, 2011.

Plaintiff filed no reply to Defendant's objection. As a result, she has offered no explanation for the delay in the filing of the application. Plaintiff's sole mention of the filing date is a statement in the Application that "[i]n light of the federal holiday, the EAJA application is due January 3, 2012." The federal holiday for New Years was January 2, 2012. The federal courts were open for business on the due date of December 29, 2011. Without further explanation, this Court must conclude the untimely filing of the request for compensation was unwarranted and, therefore, may not be considered.

IT IS THEREFORE RECOMMENDED that Plaintiff's Application for the Award of Attorney's Fees Under the Equal Access to Justice Act filed January 3, 2012 (Docket Entry #22) be **DENIED**.

The parties are herewith given fourteen (14) days from the date of the service of these Findings and Recommendation to file with the Clerk of the court any objections, with supporting brief. Failure to object to these Findings and Recommendation within fourteen (14) days will preclude appellate review of this decision by the District Court based on such findings.

DATED this 3rd day of April, 2012.


KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE